IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 10.09.2007

Coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Criminal Original Petition No.18155 of 2006

1. M/s.Sri Chendur Tex
By partner P.Gnanasekaran,
49, First Main Road,
Shenoy Nagar West,
Chennai-30.

2. P.Gnanasekaran,
Partner M/s.Sri Chendur Tex,
49 First Main Road,
Shenoy Nagar West,
Chennai-30.

3. Smt.G.Nanthini,
Partner M/s.Sri Chendur Tex,
49, First Main Road,
Shenoy Nagar West,
Chennai-30. ... Petitioners

vs.

M.Sundaramoorthy ... Respondent

Petition under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioners : Mr.V.S.Kesavan
For Respondent : Mr.A.K.Kumarasamy

O R D E R

The petitioners herein, who are accused in C.C. No.473 of 2005 on the file of Judicial Magistrate No.II, Erode, seek to call for the records pertaining to the proceedings in the above case and quash the same.

2. It is alleged that the petitioners have borrowed Rs.40,000/- from the respondent/complainant and by way of discharging the liability, they issued a cheque bearing No.136064, dated 27.07.2005, for Rs.40,000/- drawn on the UCO Bank, Erode Branch, and on 08.08.2005, the cheque was presented for collection. It is the further allegation that the cheque was dishonoured, whereupon, a legal notice dated 25.08.2005 was issued to the

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petitioners/accused and, in spite of receipt of the notice, the amount mentioned in the cheque was not paid, resulting in filing of the complaint before the learned Magistrate.

3. Learned counsel for the petitioners submits that the cheque has been issued in the name of the complainant by name Sundaramurthy, who, in turn endorsed the same in favour of Vadivamabal Tex; in such circumstances, Vadivambal Tex became the holder in due course. Further, the cheque has also been deposited in the bank account of Vadivambal Tex and it was returned unpaid on 08.08.2005 on the ground 'funds insufficient'. According to the learned counsel, inasmuch as Vadivambal Tex has become the holder in due course, the complaint preferred by Sundaramurthy, who is the original drawee of the cheque and not the holder in due course, is not maintainable at all.

4. Per contra, learned counsel for the respondent submits that the complainant/respondent is a partner of Vadivambal Tex and only under such circumstances, the endorsement has been made in the cheque and it was deposited in the account of the Firm.

5. I have perused the materials available on record and carefully considered the rival submissions. There is no dispute that the cheque issued to Sundramurthy/original drawee was endorsed by him in favour of Vadivambal Tex. Neither in the notice nor in the complaint, it is stated that the the complainant Sundaramurthy is a partner of Vadivambal Tex; in such circumstances, an inference cannot be drawn that the respondent-complainant is one of the partners of Vadivambal Tex and that in such capacity, he endorsed the cheque in favour of the Firm. In all probability, at least in a representative capacity, the respondent-complainant should have filed the complaint, representing Vadivamabal Tex. Hence, it must be presumed that the complaint has been filed by a different person and not by the holder in due course. Since there is no direct liability to the complainant, the complaint preferred by him is not maintainable and the proceedings against the accused will only be an abuse of process of court.

In that view of the matter, the Criminal Original Petition is allowed. The proceedings as against the petitioners in C.C. No.473 of 2005 on the file of Judicial Magistrate No.II, Erode, are quashed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

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To

1. The Judicial Magistrate No.II,
Erode.

2. -do- through the Chief Judicial Magistrate,
Erode.

1 CC To Mr.V.s.Kesavan, Advocate, SR NO.56977.
1 CC To Mr.A.K.Kumarasamy, Advocate, SR NO.56293.

Crl.O.P. No.18155/06

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